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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re) Case No. 11-20672-E-13
TRE HOLDINGS, LLC,)
Debtor(s).)

This memorandum decision is not approved for publication and may not be cited except when relevant under the doctrine of law of the case or the rules of claim preclusion or issue preclusion.

MEMORANDUM OPINION AND DECISION
Order to Show Cause - Craig Cawlfeld, Dkt. #50

The hearing on the Order to Show Cause issued by the court on April 29, 2011 (the hearing having been continued at the request of the parties in interest), concerning the conduct of Craig Cawlfeld in the commencement of this Chapter 13 case and repeated false representations to this court that he was admitted to appear in the Eastern District of California. Mr. Cawlfeld appeared at the hearing. In addition, Mr. Tremaine Fowlkes appeared at the hearing, in response to an order to show cause concerning his conduct, and Walter J. Sawicki, the attorney of record for the Debtor for the appeal pending before the District Court and the order to show cause filed against Tremaine Fowlkes, has filed notices with this court that he has withdrawn for such

1 representation.

2 The Order to Show Cause, Dckt. 50, addressed the conduct of
3 Craig Cawlfieid, as counsel of record for the Debtor in this case,

4 1. Commencing a Chapter 13 bankruptcy case for a limited
5 liability company (a fictitious person) in violation of 11 U.S.C.
6 § 109(e);

7 2. Failure to include City National Bank and Reliance on the
8 Verification of Master Mailing List filed in this case;

9 3. Stating under penalty of perjury in two declarations in
10 this case that counsel was licensed to practice in all federal
11 districts in California, when he is not admitted to practice in the
12 Eastern District of California (where he was commencing the Chapter
13 13 bankruptcy case).

14 **Commencement of Chapter 13 Case**

15 On January 10, 2011, TRE Holdings, LLC commenced a Chapter 13
16 case by filing a voluntary petition in bankruptcy. Dckt. 1.
17 Tremaine Fowlkes signed the petition on January 4, 2011, stating
18 that he was a Member of TRE Holdings, LLC. Craig Cawlfieid also
19 signed the petition as the attorney for TRE Holdings, LLC. In
20 signing the petition, Mr. Cawlfieid certified that to the best of
21 Mr. Cawlfieid's knowledge, information, and belief, formed after an
22 inquiry reasonably under the circumstances the pleading filed:

23 a. Is not being presented for any improper purpose.

24 b. The legal contentions therein are warranted by
25 existing law or by a nonfrivolous argument for the extension,
26 modification, or reversal of existing law or the establishment
27 of new law.

28 Fed. R. Bankr. P. 9011(b)(1) and (2). If, after notice and

1 opportunity to respond, the court determines that the
2 certifications have been violated, the court may impose an
3 appropriate sanction on the attorney. The sanction imposed by the
4 court shall be such to deter repetition of such conduct or
5 comparable conduct by others similarly situated, which may include
6 an order to pay a penalty into court. *Id.*, 9011 (c).

7 Mr. Cawlfild filed on January 10, 2011, a Verification of
8 Master Address List for the Debtor, which was signed by Mr.
9 Fowlkes. Dckt. 4. For this Chapter 13 bankruptcy case filed by
10 this limited liability company, the only addresses listed were for
11 TRE Holdings, LLC (the Debtor) and the United States Trustee. Mr.
12 Fowlkes states under penalty of perjury that the information is
13 accurate. No Schedules or Statement of Financial Affairs was filed
14 in the bankruptcy case.

15 Chapter 13 Bankruptcy Case

16 Congress limited the persons who can qualify as a Chapter 13
17 debtor. Only an "individual with regular income" may be a debtor
18 in a Chapter 13 case. 11 U.S.C. § 109(e). Though fictitious
19 entities such as corporations, partnerships, and limited liability
20 companies fall within the broad definition of "person" as set forth
21 by Congress in 11 U.S.C. § 101(41), they are not an individual as
22 used in that definition. A limited liability company, a separate
23 fictitious entity from any individual, does not meet the statutory
24 requirement that only an individual is legally able to commence a
25 Chapter 13 case.¹

26
27 ¹ A limited liability company is an entity created under
28 California Corporations Code §§17000 et. seq. which has one or
more members, for which no member has personal liability for the
debts, liabilities, or obligations of the limited liability

1 When the improper filing of this Chapter 13 case by a limited
2 liability company was brought to the court's attention, as Order to
3 Show Cause was issued on February 1, 2011, directing Craig
4 Cawlfeld to address his conduct in the improper filing. Dckt. 17.
5 Mr. Cawlfeld responded timely, filing his declaration on February
6 16, 2011. "First Cawlfeld Declaration," Dckt. 19.

7 The First Cawlfeld declaration testifies under penalty of
8 perjury that Mr. Cawlfeld is an attorney licensed to practice law
9 in California and **"in all Federal courts located in California."**

10 Emphasis added. Mr. Cawlfeld testifies that he is informed and
11 believes that TRE Holdings, LLC is a closely held limited liability
12 corporation with all or a majority of its shares owned by Tremaine
13 Fowlkes. With respect to the bankruptcy filing, Mr. Cawlfeld
14 states that he was contacted by Ron Hacker, whom is identified in
15 the declaration as acting as a business and real estate manager for
16 TRE Holdings, LLC. Mr. Cawlfeld testifies that he had previously
17 represented TRE Holdings, LLC in state court litigation.

18 Mr. Cawlfeld further testifies that the bankruptcy petition
19 was prepared by a paralegal in his office and forwarded to
20 Mr. Cawlfeld for review. Mr. Cawlfeld (who states that he has
21 minimal bankruptcy experience) had some remembrance that a Chapter
22 13 case was limited to an individual. Notwithstanding his concern,
23 and without conducting any legal research, Mr. Cawlfeld chose to

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26 company based solely on being a member. A limited liability
27 company is an entity which allows its members to have the
28 liability protection afforded to shareholders of a corporation
and receive the pass-through tax advantage of a partnership
without the restrictions on limited partnerships and S
corporations. BALLANTINE AND STERLING CALIFORNIA CORPORATION LAWS, 4TH
EDITION, § 901.01 -.02

1 rely on representations made by his client that the bankruptcy
2 needed to be immediately filed as a Chapter 13 case and that the
3 client would provide him with the legal authority supporting the
4 filing at a later date. In addition, Mr. Cawlfieid directs the
5 court to an email stated to be from his paralegal which discusses
6 an LLC filing a Chapter 13 bankruptcy case. No citations, legal
7 authority, or source of the text in the email from the paralegal is
8 provided.

9 It was only after acceding to the demands of his client, and
10 relying on the legal opinion of his client and unattributed email,
11 did Mr. Cawlfieid conduct any research and conclude that the filing
12 of a Chapter 13 case was improper. Mr. Cawlfieid further testifies
13 that after he discovered that the filing of the Chapter 13 case was
14 improper, he discussed with his client converting the case to one
15 under Chapter 11. However, due to "unfamiliarity with the local
16 procedures of the Eastern District of California," he incorrectly
17 thought that the case would not be dismissed until after
18 February 22, 2011, notwithstanding TRE Holdings, LLC's failure to
19 file any schedules or statement of financial affairs. He based
20 this mis-belief based on his experience of cases being dismissed in
21 the United States Bankruptcy Court for the Central District of
22 California.

23 Craig Cawlfieid appeared at the hearing on the Order to Show
24 Cause and explained his "error" and steps taken to correct the
25 misunderstanding of the law in his office. Based upon the
26 explanation at the hearing and Mr. Cawlfieid's testimony under
27 penalty of perjury, the court discharged the Order to Show Cause.
28 Dckts. 22 and 23.

1 Shortly after discharging the Order to Show Cause, the court
2 was presented with a motion to annul the automatic stay filed by
3 Pro Value Properties, Inc., the holder of a deed of trust against
4 real property owned by an entity known as BAG Fund, Inc. The
5 court's detailed findings of fact and conclusions of law are stated
6 in the Civil Minutes, Dckt. 48. Craig Cawlfeld, as the attorney
7 for TRE Holdings, LLC in this bankruptcy case filed his declaration
8 in opposition to the motion. Mr. Cawlfeld chose to provide his
9 personal testimony in opposition to motion to annul the stay.
10 Second Cawlfeld Declaration, Dckt. 39. Mr. Cawlfeld again
11 testified under penalty of perjury that he is licensed to practice
12 "in all Federal courts located in California." Dckt. 39, emphasis
13 added.

14 The court granted the motion and annulled the automatic stay.
15 The evidenced showed that the bankruptcy case was filed by TRE
16 Holdings, LLC to try and use the automatic stay in this case to
17 block the foreclosure sale by Pro Value Properties, Inc. of the BAG
18 Fund, Inc. property. BAG Fund, Inc. and TRE Holdings, LLC (which
19 transferred the property to BAG Fund, Inc.) asserted that the
20 automatic stay in the TRE Holdings, LLC bankruptcy case protected
21 an unrecorded junior deed of trust and rendered any foreclosure by
22 Pro Value Properties, Inc. in valid.

23 In granting the motion and annulling the automatic stay the
24 court made several critical findings as to the opposition presented
25 and evidence submitted. First, the deed to BAG Fund, Inc. clearly
26 stated that the value of the property was less than the liens
27 against the property. Second, TRE Holdings, LLC did not record the
28 purported deed of trust until January 26, 2011. Third, TRE

1 Holdings, LLC never provided any evidence of a promissory note
2 secured by the alleged deed of trust. Fourth, The foreclosure sale
3 occurred on January 25, 2011, one day before the recording of the
4 alleged deed of trust. Fifth, Mr. Cawlfieid's declaration
5 conspicuously omits any reference to the alleged unrecorded deed of
6 trust or the existence of any promissory note. Further,
7 Mr. Cawlfieid does not testify what he did, as the bankruptcy
8 attorney for TRE Holdings, LLC, to notify the foreclosure company
9 of the bankruptcy filing and creation of the automatic stay.²
10 Mr. Cawlfieid does testify that now that the foreclosure sale has
11 occurred concerning the unrecorded deed of trust, he and the Debtor
12 were willing to pursue settlement negotiations over the alleged
13 violation of the automatic stay.

14 The court ultimately concluded that the bankruptcy filing by
15 TRE Holdings, LLC was part of an improper scheme to delay or hinder
16 the foreclosure sale. The court concluded that the evidence
17 submitted by TRE Holdings, LLC was not credible evidence of the
18 alleged obligation, validity of the deed of trust, or good faith in
19 commencing the Chapter 13 case for TRE Holdings, LLC. It was in
20 connection with the hearing that counsel for Pro Value Properties,
21 Inc. brought to the court's attention that Craig Cawlfieid was not
22 admitted to practice before the Eastern District of California,
23 which the court confirmed with the Clerk of the United States
24 Bankruptcy Court for the Eastern District of California.

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27 ² The court takes judicial notice of the fact that
28 attorneys representing debtors filing bankruptcy to stay a
foreclosure sale immediately notice the foreclosure company of
the case and automatic stay.

Counsel's Misrepresentations to this Court

If at the time of the first Order to Show Cause for the improper filing of the Chapter 13 case by a limited liability company the court had been aware of the facts which came to light in the motion to annul, the outcome of that proceeding may well have been different. The court, in ruling on the motion to annul, determined that Mr. Cawlfeld was directly involved in the scheme which led to the annulment of the stay. However, the ruling on the First Order to Show Cause having been issued, the court does not re-litigate the conduct of improperly filing the Chapter 13 case, though that conduct is relevant in considering the testimony now before the court in considering Mr. Cawlfeld's testimony. The court discharges that portion of the Order to Show Cause which relates to the improper commencing of the Chapter 13 case for a limited liability company. The court also discharges that portion of the Order to Show Cause relating to the failure to include City National Bank and Reliance on the Verification of the Master Mailing list filed in this case.

The court now considers Mr. Cawlfeld appearing before the courts of the Eastern District of California, signing pleadings and commencing a bankruptcy case for a client for which an attorney must be admitted to practice before the Eastern District of California, and testifying on two occasions under penalty of perjury that he was admitted to practice before the Eastern District of California. During all periods relevant to this Order to Show Cause Mr. Cawlfeld was not admitted to appear before the United States District Court and United States Bankruptcy Court for the Eastern District of California.

1 Craig Cawlfild filed a declaration in response to the instant
2 Order to Show Cause on July 12, 2011. Dckt. 78, "Third Cawlfild
3 Declaration." In this third declaration Mr. Cawlfild now
4 testifies that he was admitted to practice in the Eastern District
5 of California on May 23, 2011. Exhibit 1 to the Third Cawlfild
6 Declaration is identified as an email from the District court
7 confirming that Mr. Cawlfild was "now admitted to practice" in the
8 Eastern District of California. This email, identified as from
9 Victoria Minor and Kimberly Zignago, is dated May 26, 2011.

10 In the Third Cawlfild Declaration, Mr. Cawlfild testifies
11 under penalty of perjury that in 2000 he applied and was admitted
12 to practice in the Central District of California. He states that
13 he "mistakenly assumed" that the paperwork he completed for the
14 Central District of California was effective for all districts in
15 California. Mr. Cawlfild testifies that while he did not make the
16 prior statements under penalty of perjury with an intent to mislead
17 the court or abuse the bankruptcy system, there were merely
18 "boilerplate statements which I carelessly inserted without
19 verifying the fact that my admission to federal practice was valid
20 only in the Central District of California." Third Cawlfild
21 Declaration, pg. 2:22-25.

22 Though not filing a written response, Walter J. Sawicki
23 appeared at the hearing telephonically to support Craig Cawlfild
24 in response to the Order to Show Cause. Mr. Sawicki had appeared
25 as the attorney of record for the Debtor for the appeal of this
26 court's order annulling the automatic stay and the orders to show
27 cause. On July 10, 2011, Mr. Sawicki filed Verified Notices of
28 Termination of Representation TRE Holdings, LLC for the appeal,

1 Craig Cawlfild with respect to the Order to Show Cause, and
2 Tremaine Fowlkes with respect to the order to show cause.
3 Dckts. 70, 72, and 73. In the verified pleading Mr. Sawicki
4 testifies under penalty of perjury that he was retained by Ron
5 Hacker, who was the agent of TRE Holdings, LLC. Mr. Sawicki
6 testifies in May of 2011, Mr. Hacker terminated the employment
7 relationship by refusing to pay Mr. Sawicki his fees. No
8 explanation is provided as to how Mr. Hacker, a third-party, could
9 terminate the attorney-client relationship which was created
10 between Mr. Sawicki and Mr. Cawlfild, and Mr. Sawicki and
11 Mr. Fowlkes.

12 In the Third Cawlfild Declaration, Mr. Cawlfild testifies
13 under penalty of perjury that Ron Hacker is the owner of BAD Fund,
14 the purchaser of the property from TRE Holdings, LLC³. In his
15 first declaration, Mr. Cawlfild testifies under penalty of perjury
16 that it was actually Ron Hacker, acting as a business and real
17 estate manager for TRE Holdings, LLC, who contacted him on
18 January 6, 2011 for the emergency bankruptcy filing. Dckt. 19,
19 pg. 2:7-9. Though the name did not appear to be significant at the
20 time of the first declaration, it appears that Mr. Hacker was the
21 acting as the principal for both BAG Fund, Inc. Though BAG Fund,
22 Inc. was the owner of the real property which was the subject of
23 the imminent foreclosure, Mr. Cawlfild and Mr. Hacker worked
24

25 ³ The declaration references the Debtor as TRE Holdings
26 Capital rather than TRE Holdings, LLC. While it is clear to the
27 court that Mr. Cawlfild is making reference to the TRE Holdings,
28 LLC, the Debtor, it raises the question as to how many different
"TRE Holdings" entities that Mr. Cawlfild, Mr. Fowlkes,
Mr. Hacker, and others have been involved with concerning the
obligation which was the subject of the motion to annul the stay.

1 together to file the Chapter 13 case for TRE Holdings, LLC and
2 assert a trust deed and note (evidence which was never presented to
3 the court) to assert a violation of the automatic stay and attempt
4 to negotiate a settlement thereof.

5 **DECISION**

6 The court is presented with the difficult and unpleasant task
7 of judging the conduct of an attorney who has testified under
8 penalty of perjury. There is no dispute that Craig Cawlfild was
9 not admitted to practice in the Eastern District of California.
10 There is no dispute that he affirmatively misrepresented under
11 penalty of perjury that he was admitted to practice in the Eastern
12 District of California. It is also clear that even after having it
13 confirmed to him that he was not admitted to practice in the
14 Eastern District of California, Pro Value Properties, Inc. Reply to
15 Opposition to Motion to Annul filed on April 19, 2011, Dckt. 44,
16 and this second Order to Show Cause issued by the court on
17 April 29, 2011, Craig Cawlfild did not become admitted to appear
18 in the Eastern District of California until May 25, 2011, on the
19 eve of the June 7, 2011 hearing on this second Order to Show Cause.

20 The court is asked to accept an explanation that an
21 experienced attorney who has been appearing in federal court for
22 ten (10) years made the mistaken assumption that admission before
23 in the Central District of California was an automatic admission in
24 all other districts in California. Further, the court would have
25 to accept as an excuse for making such misstatements under penalty
26 of perjury because there were merely "boilerplate statements which
27 I carelessly inserted without verifying the fact that my admission
28 to federal practice was valid only in the Central District of

1 California." Third Cawlfieid Declaration, pg. 2:22-25. There is
2 no exception to committing perjury over a material
3 misrepresentation because it was "boilerplate language" or the
4 declarant chose not to take the time to verify the statements
5 before making them under penalty of perjury.

6 The credibility of Mr. Cawlfieid is further undercut by his
7 testimony and the arguments of Mr. Sawicki. The court accepts as
8 truthful Mr. Sawicki's statements in his Verified Notices of
9 Termination of Attorney Representation that it was Ron Hacker, the
10 owner of BAG Fund, Inc. who was acting as the principal of TRE
11 Holdings, LLC in this bankruptcy case in arranging for Mr. Sawicki
12 to create attorney-client relationships with Craig Cawlfieid,
13 Tremaine Fowlkes, and TRE Holdings, LLC. The court accepts as
14 truthful Mr. Cawlfieid's testimony that it was Ron Hacker who
15 communicated with him and arranged for Craig Cawlfieid to file the
16 Chapter 13 case for TRE Holdings, Inc.

17 Craig Cawlfieid further testifies that he had an attorney-
18 client relationship with TRE Holdings, LLC in state court
19 proceedings. He testifies that he has personal knowledge that TRE
20 Holdings, LLC is a party in several California Superior Court
21 lawsuits, TRE Holdings, LLC has at least three appeals it has
22 commenced from the state court actions, and that he has made
23 appearances at status conferences for TRE Holdings, LLC. It was
24 the knowledge he had of these facts and the litigation that Mr.
25 Cawlfieid considered in commencing the bankruptcy case in which he
26 provided the declarations.

27 The court does not find credible the contention that the
28 affirmative misstatement of being admitted to appear in the Eastern

1 District of California were a mere oversight. The court also does
2 not accept the "it was merely boilerplate" and "I didn't bother to
3 conduct any investigation of the facts I was testifying under
4 penalty of perjury" excuses. Counsel clearly knew he had to be
5 admitted to practice in the federal district, having applied to the
6 Central District of California ten years earlier. It is
7 unreasonable to contend that an attorney with ten years of
8 experience could believe in good faith that being admitted to
9 appear in one federal district allowed the attorney to appear in
10 all federal districts. If such was his belief, no explanation was
11 provided as to why he carefully limited the statement in his
12 declarations to merely state that he was admitted to appear in all
13 federal court in California.

14 Mr. Cawlfieid's own testimony is that he has significantly
15 more knowledge, experience, and involvement with TRE Holdings, LLC
16 and Ron Hacker than merely getting an emergency call to file a
17 bankruptcy. He also knew that Ron Hacker was the owner of BAG
18 Fund, Inc., the entity which held title to the property that was
19 the subject of the foreclosure, and that Mr. Hacker was acting as
20 the principal of TRE Holdings, LLC instructing Mr. Cawlfieid to
21 file the Chapter 13 bankruptcy case.

22 The court finds that Craig Cawlfieid intentionally, or with
23 such reckless disregard of the facts as to be unreasonable,
24 misrepresented under penalty of perjury in two declarations that he
25 was admitted to appear in the Eastern District of California. The
26 court does not know if this was done merely to try and obtain some
27 short term business from Ron Hacker, if he has a greater interest
28 in Mr. Hacker's investments, if he believed that creating a

1 violation of the automatic stay would inure to his economic
2 benefit, or he just would state whatever was necessary to make the
3 best testimony possible for his client to prevail in trying to
4 preserve a violation of the automatic stay.

5 The court cannot condone this conduct or allow this counsel or
6 other counsel to believe that attorneys or other witnesses may make
7 boilerplate or other statements without any minimal investigation
8 under penalty of perjury. The judicial process is built on
9 witnesses testifying truthfully, and continuing to do so in the
10 future.

11 The appropriate corrective sanction ordered in this case is a
12 monetary payment by Craig Cawlfild of \$500.00 to the Clerk of the
13 Bankruptcy Court. Such amount is below the dollar limit for
14 sanctions which must be reported to the California State Bar and is
15 not punitive, but should have the intended prospective effect of
16 inducing this counsel and other witnesses to truthfully make
17 statements in declarations.

18 The \$500.00 shall be paid on or before September 30, 2011.
19 Failure to timely pay the sanction to the Clerk of the Bankruptcy
20 Court shall result in the court certifying this matter to the
21 United States District Court for consideration of punitive
22 sanctions and notice to the Clerk of the United States District
23 Court and Bankruptcy Court of the failure to pay this court ordered
24 sanction.

25 ///

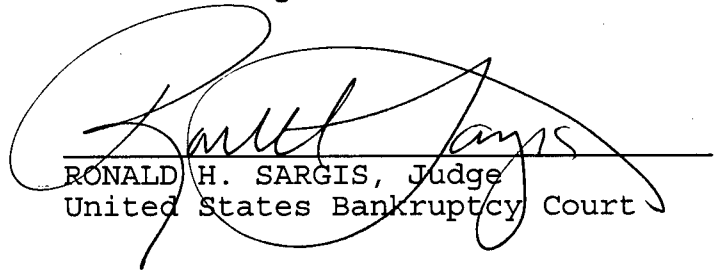
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1 This Memorandum Opinion and Decision constitutes the court's
2 findings of fact and conclusions of law. The court shall issue a
3 separate order consistent with this ruling.

4 Dated: September 6, 2011

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6 RONALD H. SARGIS, Judge
7 United States Bankruptcy Court
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CERTIFICATE OF MAILING

The undersigned deputy clerk in the office of the United States Bankruptcy Court for the Eastern District of California hereby certifies that the attached document(s) was served by mail to the following entities listed at the address(es) shown below:

Service List:

Craig Cawlfild
11301 Olympic Blvd #519
Los Angeles, CA 90064

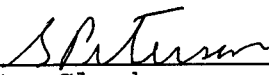
Walter Sawicki
2430 Ocean View Ave #305
Los Angeles, CA 90057

Tremaine Fowlkes
TRE Holdings, LLC
5541 McKay St
Fair Oaks, CA 95628

David Cusick
PO Box 1858
Sacramento, CA 95812-1858

Office of the U.S. Trustee
Robert T Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

DATE: 9/8/11


Deputy Clerk